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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

24 Cr. 556 (DEH)

ERIC ADAMS,

Defendant.

New York, N.Y.  
February 19, 2025  
2:00 p.m.

Before:

HON. DALE E. HO,

District Judge

APPEARANCES

EMIL J. BOVE III  
Acting Deputy Attorney General

QUINN EMANUEL URQUHART & SULLIVAN LLP  
Attorneys for Defendant

BY: ALEX SPIRO  
WILLIAM A. BURCK

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, can you please state your  
3 name for the record, starting with the government.

4 MR. BOVE: Thank you.

5 Good afternoon, your Honor. Emil Bove for the  
6 government.

7 THE COURT: Good afternoon. Please have a seat.

8 MR. SPIRO: Good afternoon, your Honor. It's Alex  
9 Spiro and William Burck on behalf of Eric Adams.

10 THE COURT: Good afternoon to you both. Good morning,  
11 Mayor Adams. Please have a seat.

12 First of all, thank you all for coming in on such  
13 short notice. On February 14, the government filed a motion to  
14 dismiss the charges in the indictment without prejudice under  
15 Rule 48. I believe it is at ECF No. 122. I called this  
16 conference because I have a few questions.

17 But before I jump in, I just want to emphasize a few  
18 things. The first is that, while there is not a lot of  
19 authority on Rule 48, at least two basic things are relatively  
20 clear to me. One is that a court has very little discretion  
21 here. I'm well aware of that. And that the government, in the  
22 words of the Second Circuit, is the first and presumptively  
23 best judge of whether a prosecution should be terminated.

24 Second, notwithstanding what I just said, the case law  
25 in this area also makes clear that the court does have a

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1 limited role to play. Otherwise, there would be no purpose for  
2 the requirement of leave under Rule 48. And so, to properly  
3 discharge my duty, I want to proceed carefully starting by  
4 making sure that I understand a few basic things about the  
5 government's motion and where we are today.

6 Having reviewed it, I do have some basic questions  
7 about issues, including the effect of the motion, if granted,  
8 mayor Adams' consent to it, the basis for the motion, and what  
9 I'm allowed to consider in resolving the motion. So we'll get  
10 to all of that in turn.

11 Second thing that I want to emphasize before we get  
12 started is, I want to make very clear that the mere fact that I  
13 have a few questions today is in no way a commentary on the  
14 merits of this case. For one thing, and most obviously, any  
15 criminal defendant, and Mayor Adams, is presumed innocent in  
16 the eyes of the law and this court.

17 For another thing, as I understand it, although I'll  
18 want to confirm this as we go, my understanding is that the  
19 government's motion to dismiss the indictment is being made  
20 without reference to the strength of the case either in terms  
21 of the facts or the government's legal theory. So the  
22 questions that I have today go to issues regarding the motion  
23 to dismiss the indictment and not to the indictment itself.

24 So with that, I just want to reiterate that I really  
25 appreciate you all coming in here today on short notice because

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1 I need your assistance in sorting out how to handle what I  
2 think everyone would agree is a somewhat unusual situation.

3 So I just want to start with the motion itself. I've  
4 reviewed it. It was filed on February 14, and it's at ECF No.  
5 122. It's probably easiest for everyone to follow along if I  
6 ask my courtroom deputy to bring it up on the screen. So I'm  
7 going to do that.

8 Ms. Morales, would you please bring up ECF No. 122 on  
9 to the screen.

10 I want to ask about paragraph two, which states:

11 Through counsel, Defendant Eric Adams has consented in  
12 writing to this motion and agreed that he is not a prevailing  
13 party for purposes of the Hyde Amendment. So I want to ask  
14 about that written consent. I believe that it was filed by  
15 defense counsel yesterday and is on the document on ECF 131-1.

16 Ms. Morales, would you please bring that up.

17 Thank you.

18 So this is a letter dated February 14, 2025, from  
19 Mr. Spiro and addressed to Mr. Bove. And I assume the parties  
20 have all seen this document.

21 Mr. Bove?

22 MR. BOVE: Yes, Judge.

23 MR. SPIRO: Yes, your Honor.

24 THE COURT: OK. And, Mr. Bove, is this the written  
25 consent that is referenced in the government's motion?

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1 MR. BOVE: Yes, your Honor.

2 THE COURT: OK. And, Mr. Spiro, it's signed by you?

3 MR. SPIRO: Yes, your Honor.

4 THE COURT: OK. And the letter is not signed by Mayor  
5 Adams, is that right?

6 MR. SPIRO: That's correct.

7 THE COURT: OK. So, Mayor Adams, I have to ask you  
8 some questions about your consent to the motion, because my  
9 understanding is that by entering your consent, you're waiving  
10 certain rights which I intend to go over to make sure that your  
11 consent is knowing and voluntary.

12 So in order to ensure that your consent is valid, I  
13 have to ask two sets of questions. One is a standard set of  
14 questions about your mental state and your ability to  
15 understand today's proceedings that I always ask of any  
16 defendant that seeks, who seeks to waive certain rights. And  
17 then the second is a series of questions that is specific to  
18 this consent and the scope of your consent.

19 I just have to do this to establish to my satisfaction  
20 that you understand what you'll be waiving and that you're  
21 doing so knowingly and voluntarily. And I want to make clear,  
22 I don't intend to ask you any questions about anything beyond  
23 those two topics.

24 Is that OK?

25 THE DEFENDANT: Yes, it is.

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1 THE COURT: With respect to the questions that I do  
2 have, I have to -- and my typical practice is -- and I think I  
3 have to ask you these questions under oath to ensure that your  
4 consent to the motion and waiver of certain rights is knowing  
5 and voluntary.

6 I just want to confirm that you and your counsel are  
7 OK with that before I proceed.

8 MR. SPIRO: No issue, your Honor.

9 THE COURT: OK. All right. Ms. Morales, would you  
10 please swear in Mayor Adams.

11 (Defendant sworn)

12 THE DEPUTY CLERK: Please state your name for the  
13 record.

14 THE DEFENDANT: Eric Leroy Adams.

15 THE COURT: Thank you, Mr. Adams. Please have a seat.  
16 So, as I mentioned, I'm going to ask you a few  
17 questions about your mental state today.

18 Is that OK?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: OK. Is your mind clear today?

21 THE DEFENDANT: Yes, it is, your Honor.

22 THE COURT: And you understand what's happening in  
23 these proceedings today?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: OK. I'm going to ask you a few standard

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1 questions about issues that sometimes come up when a defendant  
2 purportedly waives some rights, but later there will questions  
3 about the validity of that waiver.

4 I'm going to ask about certain circumstances and  
5 whether or not those are present, and if so, whether they  
6 affect your ability to participate in today's proceedings.

7 But at the same time, I want to be mindful of your  
8 privacy and I don't want to make you uncomfortable. I want to  
9 make clear I'm not going to pry into any details. Again, these  
10 are standard questions that I ask defendants in cases when they  
11 seek to waive rights.

12 Is that OK and may I proceed?

13 THE DEFENDANT: Yes, it is.

14 THE COURT: Thank you.

15 Are you now or have you recently been under the care  
16 of a doctor or mental health professional, such as a  
17 psychiatrist or a psychologist, and if so, I don't want to ask  
18 you any details about that, but if so, is there anything about  
19 such an experience, if you've had any, that would interfere  
20 with your ability to understand what is happening in these  
21 proceedings today?

22 THE DEFENDANT: No, I have not.

23 THE COURT: OK. And, again, I won't pry into details,  
24 but I have to ask if you have been treated or hospitalized for  
25 any type of addiction, such as drug or alcohol addiction, and

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1 if so, if there is anything about such an experience, if you  
2 have had any, that would interfere with your ability to  
3 understand what is happening in these proceedings today?

4 THE DEFENDANT: No, I have not.

5 THE COURT: And have you taken any drugs, medicine,  
6 pills, or drunk any alcoholic beverages in the past two days  
7 that could affect your ability to follow these proceedings  
8 today?

9 THE DEFENDANT: No, I have not.

10 THE COURT: OK. Mr. Spiro, you've discussed this  
11 matter with your client?

12 MR. SPIRO: I have, your Honor.

13 THE COURT: And in your judgment, is he capable of  
14 understanding today's proceedings?

15 MR. SPIRO: Yes, sir.

16 THE COURT: OK. And does counsel for either side have  
17 any doubt as to the defendant's competence to consent to the  
18 government's motion at this time?

19 MR. BOVE: No, Judge.

20 MR. SPIRO: No, your Honor.

21 THE COURT: Thank you both.

22 On the basis of Mayor Adams' responses to my  
23 questions, my observations of his demeanor here in court, and  
24 the representations of counsel, I find that he is fully  
25 competent to enter a knowing and voluntary consent at this



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1 time.

2 So I want to ask about now, turn to the second bucket  
3 of questions about the scope of your consent, Mayor Adams.

4 And, Ms. Morales, if you could please bring the  
5 government's motion back up. ECF No. 122. Could you scroll to  
6 the top of it, please.

7 And I don't know if you have a hard copy of it there,  
8 Mr. Spiro, that you could show to Mayor Adams, or we could flip  
9 through it.

10 But I just want to ask, Mayor Adams, if you have seen  
11 the government's motion to dismiss this matter?

12 THE DEFENDANT: Yes, I have, your Honor.

13 THE COURT: Have you had a chance to read it?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And did you have a chance to read it  
16 before you consented to it?

17 THE DEFENDANT: No, your Honor. It was explained to  
18 me.

19 THE COURT: It was explained to you by your attorney,  
20 Mr. Spiro?

21 THE DEFENDANT: Yes, it was, your Honor.

22 THE COURT: And we'll go over the content of the  
23 motion. But did you fully understand the substance of the  
24 motion before you authorized your consent to it?

25 THE DEFENDANT: Yes, I did, your Honor.

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1 THE COURT: OK. I want to turn back to your consent  
2 letter, if I could, the document at ECF 131-1.

3 This is a pretty short letter, Mayor Adams, but did  
4 you have a chance to read this letter indicating your consent  
5 in writing before your attorney signed it?

6 THE DEFENDANT: I did not read it. It was explained  
7 to me, your Honor.

8 THE COURT: OK. So you discussed it with Mr. Spiro?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And you authorized him to sign this  
11 consent letter on your behalf?

12 THE DEFENDANT: Yes, I have, your Honor.

13 THE COURT: Did you fully understand it before you did  
14 so and before he signed it?

15 THE DEFENDANT: Yes, I did, your Honor.

16 THE COURT: Now, Mayor Adams, you understand that in  
17 this consent letter, you're waiving the right to assert that  
18 you're a prevailing party for purposes of a Hyde Amendment?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And you understand that the Hyde Amendment  
21 provides, in relevant part, that the court in any criminal case  
22 ... may award to a prevailing party, other than the United  
23 States, a reasonable attorney's fee and other litigation  
24 expenses where a court finds that the position of the United  
25 States was vexatious, frivolous, or in bad faith, unless the

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1 court finds that special circumstances make such an award  
2 unjust.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And so you understand that by consenting  
6 to the government's motion, you are giving up your right to  
7 obtain attorneys' fees resulting from a finding that the United  
8 States was vexatious, frivolous, or in bad faith in prosecuting  
9 you unless the government finds that special circumstances  
10 would make such an award unjust?

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: OK. Now, Mr. Bove, the motion represents  
14 that Mayor Adams has consented to dismissal without prejudice,  
15 is that right?

16 MR. BOVE: Yes. Correct, Judge.

17 THE COURT: OK. And, Mayor Adams, you understand that  
18 you're consenting to dismissal of your case without prejudice?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: OK. I want to confirm that everyone is on  
21 the same page about what that means, what effect that granting  
22 the motion to dismiss without prejudice would have. And I  
23 would like to ask you, Mr. Bove, some questions, if I may,  
24 because I confess I'm not entirely sure about what that effect  
25 would be. So I appreciate you helping me out here.

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1 Mr. Bove, if and when the motion is granted, can these  
2 charges be brought again?

3 MR. BOVE: They could be, in the Department's  
4 discretion, yes, Judge.

5 THE COURT: OK. So Mayor Adams could be reindicted at  
6 a future date?

7 MR. BOVE: It's possible, in the Department's  
8 discretion, as is standard and would be the default even if the  
9 motion didn't say that under Rule 48 and the governing law.

10 THE COURT: OK. If the motion is granted, are there  
11 any limits as to the circumstances under which the government  
12 could bring charges again in the future?

13 MR. BOVE: I mean, there is some standard limitations  
14 on the Department's discretion relating to impermissible  
15 considerations, protect the classes, things like that. I think  
16 those would apply. Otherwise not.

17 THE COURT: OK. And if the motion's granted, would  
18 there be any time limits as to when the government could  
19 reindict on these charges, other than the statute of  
20 limitations?

21 MR. BOVE: Well, I think there would be -- I'm just  
22 going off-the-cuff here. There is a statute of limitations, I  
23 agree. There is separate speedy trial obligations that are  
24 both constitutional that could come into play, if we're talking  
25 about a situation that involves pre-indictment delay, and the

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1 statute could also potentially come into play.

2 THE COURT: I'm sorry. What was the last thing that  
3 you said?

4 MR. BOVE: I think the Speedy Trial Act could also  
5 come into play. Certainly, there would be a constitutional  
6 concern if there was a long delay in the charges and then they  
7 were refiled. Just to clarify, right now as the record stands,  
8 the Department and the Department's criminal division is  
9 responsible for all of these decisions.

10 THE COURT: The main Justice's Department?

11 MR. BOVE: Correct.

12 THE COURT: OK. Is there currently any anticipated  
13 timeframe in which the government would make such a  
14 determination? And the analogy I'm thinking about is with  
15 something like a deferred prosecution agreement where the  
16 government says, you know, in a year or two years, three years  
17 or something like that, we'll come back.

18 MR. BOVE: There is not, Judge.

19 I think you may have seen, in some of the attachments  
20 to one of the amicus filings, the correspondence that I had  
21 with the U.S. Attorney's office for the Southern District of  
22 New York that contemplated that office revisiting the situation  
23 when there was a Senate-confirmed U.S. Attorney in that seat.

24 That is not a condition on this motion. And so, right  
25 now, and I think this is really important, right now this is a

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1 standard Rule 48 motion where we memorialize the default, which  
2 is that the dismissal would be without prejudice. That's all  
3 that is.

4 And the Department Main Justice, the Criminal  
5 Division, in its discretion, may or may not at some point  
6 revisit whether these charges are appropriate. I don't have  
7 any plans for that at this time.

8 THE COURT: OK. In the motion, is the government  
9 committing to stopping any additional investigative steps with  
10 respect to Mayor Adams?

11 MR. BOVE: No.

12 THE COURT: OK. Thank you for clarifying all of that  
13 with me. I appreciate it.

14 I just want to now turn to defense, and I want to  
15 confirm that defense shares the same understanding now.

16 Let me start with Mr. Spiro. Does defense counsel  
17 understand that granting the motion would not prohibit the  
18 government from, just starting with that last question that I  
19 posed to Mr. Bove, taking any additional investigative steps  
20 right now?

21 MR. SPIRO: We agree with everything that was just  
22 said.

23 THE COURT: OK. Sorry. I just want the record to be  
24 very clear as to what everything constitutes.

25 MR. SPIRO: Sure.

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1 THE COURT: So defense counsel understands that the  
2 government, in its discretion, could bring these charges again?

3 MR. SPIRO: Yes.

4 THE COURT: Subject to, obviously, the limitations  
5 that Mr. Bove identified, protected classes, improper motives,  
6 and the like.

7 MR. SPIRO: Yes.

8 THE COURT: And that with respect to time limits, the  
9 government could bring these charges again at any time subject  
10 to statute of limitations and speedy trial, both constitutional  
11 and statutory speedy trial concerns.

12 MR. SPIRO: Yes. Again, I don't know that it's been  
13 fully exhaustive of what would prevent them from re-bringing a  
14 case, but we understand that the case could be re-brought.  
15 It's a dismissal without prejudice.

16 THE COURT: Could I just ask you to elaborate on what  
17 you just said about exhaustive?

18 MR. SPIRO: Well, sure. Your Honor was listing  
19 reasons why, you know, protected classes and things like that,  
20 that it could never be brought, that would be a problem with  
21 them bringing it back, and then some speedy trial and statute  
22 of limitations concerns.

23 I agree in large part. I can't say exclusively those  
24 are the things that would prevent it from being brought back.  
25 This motion, we understand, allows them to bring it back.

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1 THE COURT: OK. And you've discussed this with Mayor  
2 Adams?

3 MR. SPIRO: I have.

4 THE COURT: OK. And, Mayor Adams, I just want to  
5 confirm with you that, under the terms of the motion to which  
6 you're consenting, the government may reindict you on charges  
7 arising from the same events underlying your current indictment  
8 subject to, you know, prohibitions on protected classes and  
9 statute of limitations, but that they could do that in the  
10 future in their discretion?

11 (Defendant confers with counsel)

12 THE DEFENDANT: Yes, I understand that, Judge. I have  
13 not committed a crime and I don't see them bringing it back.  
14 I'm not afraid of that.

15 THE COURT: OK. Thank you, Mayor Adams.

16 If at any time you want to consult with Mr. Spiro or  
17 your legal team, just let me know. It's really important that,  
18 you know, to have a valid understanding of what is happening  
19 today, that you have any questions answered before you answer  
20 any of mine.

21 THE DEFENDANT: I appreciate that because I failed my  
22 law class.

23 THE COURT: I'm sorry. The first question I posed to  
24 Mr. Spiro, I just want to make sure that I pose to you.

25 You understand that granting the motion would not



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1 prohibit the government from taking any additional  
2 investigative steps at this time, there is no binding agreement  
3 with the government with respect to that, and so if they do  
4 take additional investigative steps and then you're reindicted  
5 later, you won't be able to argue that they violated some  
6 agreement not to take additional investigative steps.

7 You understand that?

8 THE DEFENDANT: Yes, I fully understand that.

9 THE COURT: OK. And I just want to confirm that no  
10 one has told you anything to the contrary that, for example,  
11 the government cannot reindict you in the future?

12 No one said that to you?

13 THE DEFENDANT: Not at all.

14 THE COURT: OK. And no one has told you that the  
15 government will not reindict you on these charges in the  
16 future?

17 THE DEFENDANT: Not at all.

18 THE COURT: OK. Here is a set of questions that I  
19 always request when someone waives something or consents to  
20 something, that they understand they have the right not to do  
21 those things.

22 I just want to confirm with you that you understand  
23 that, just as you have the right to consent to this motion in  
24 its current form, you also have the right not to consent to  
25 this motion.

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1 Do you understand that?

2 THE DEFENDANT: Yes, I do, your Honor.

3 THE COURT: OK. And to clarify what that means, you  
4 have the right to oppose this motion in whole or in part.

5 Do you understand that?

6 THE DEFENDANT: Yes, I do, your Honor.

7 THE COURT: OK. And you understand that you have the  
8 right to oppose the government's motion solely with respect to  
9 the issue of whether or not dismissal is without prejudice and  
10 that you could request that the case be dismissed with  
11 prejudice.

12 You understand that?

13 THE DEFENDANT: Yes, I do, your Honor.

14 THE COURT: And if the government were to dismiss with  
15 prejudice, assuming that there would be a valid -- I'm sorry,  
16 excuse me.

17 If the court were to dismiss with prejudice, assuming  
18 that there was some valid basis for that, that would mean that  
19 the government would not be able to reindict you on the same  
20 charges.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do, your Honor.

23 THE COURT: OK. And hearing all of that, you are  
24 consenting to the motion for dismissal without prejudice, is  
25 that right?

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1 THE DEFENDANT: Yes, I do, your Honor.

2 THE COURT: Now, Mayor Adams, you understand that  
3 under normal circumstances, you have the right to a speedy  
4 trial?

5 THE DEFENDANT: Yes, I do, your Honor.

6 THE COURT: And you understand that if, for whatever  
7 reason, this motion were withdrawn or denied, the government  
8 would have to bring you to trial within the period prescribed  
9 under the Speedy Trial Act, I think most relevant here, within  
10 70 days of indictment minus any time that has already been or  
11 could be excluded by the court. And if the government failed  
12 to do that, it would face dismissal of the charges.

13 Do you understand that?

14 THE DEFENDANT: Yes, I do, your Honor.

15 THE COURT: You understand that you're consenting to a  
16 motion that, if granted, would mean that there is no trial,  
17 right?

18 THE DEFENDANT: Yes, I do, your Honor.

19 THE COURT: Now, Mr. Bove, if I may ask, you said  
20 something earlier that about the Speedy Trial Act. And what's  
21 unclear to me, please enlighten me here, if I were to grant the  
22 motion, but the government, if the government were to, at a  
23 subsequent time, reindict Mayor Adams, my understanding is that  
24 the speedy trial clock would restart from the date of a new  
25 indictment, that is, the clock with respect to the time for

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1 trial.

2 Do I have that right?

3 MR. BOVE: I believe so, yes.

4 THE COURT: OK. So, Mr. Spiro, is that the defense's  
5 understanding as well?

6 MR. SPIRO: I believe so as well, yes.

7 THE COURT: OK. So, Mayor Adams, you understand that  
8 if the government were to reindict you on these charges in the  
9 future, it wouldn't give you an ability to -- you wouldn't have  
10 the ability to argue that your right to a speedy trial under  
11 the Speedy Trial Act had been violated based on the passage of  
12 time between this indictment and this hypothetical future one?

13 Do you understand that?

14 THE DEFENDANT: Yes, I do, your Honor.

15 THE COURT: OK. Just a few more questions for you,  
16 Mayor Adams, before I wrap up and turn to a different topic.

17 Does the consent in writing, that letter from  
18 Mr. Spiro that we were talking about earlier, does that  
19 constitute the sum total of your agreement with the government?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Has there been anything left out of your  
22 consent in writing?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Are there any other agreements, written or  
25 otherwise, that you've entered into with the government?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: And then other than what's in the  
3 government's motion itself, has anything been promised to you  
4 to induce you to consent to the motion?

5 THE DEFENDANT: Not at all, your Honor.

6 THE COURT: OK. Has anyone threatened you in any way  
7 to induce you to consent to the motion?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Thank you, Mayor Adams. I think those are  
10 all the questions that I'll have for you today.

11 Just so the parties understand, I'm going to review  
12 this transcript to ensure that I've asked all the correct  
13 questions. But does counsel for either side believe that there  
14 is any reason that I should not find that Mayor Adams has  
15 knowingly and voluntarily consented to the motion for a  
16 dismissal without prejudice?

17 MR. BOVE: No, Judge.

18 MR. SPIRO: No, your Honor.

19 THE COURT: OK. Thank you.

20 If we could, I would like to turn back to the basis  
21 for the motion itself. That's at ECF No. 122. The motion, I  
22 mean.

23 Ms. Morales, would you please bring it back up on the  
24 screen, back up on the screen.

25 While she's doing that, Mr. Bove, just so you see

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1 where I'm going, I just have a few questions so that I can  
2 understand the basis for the motion and what I should or should  
3 not consider while I'm reviewing the motion.

4 MR. BOVE: Yes, Judge.

5 THE COURT: OK. The first thing, though, before I  
6 dive into the contents of it, I just want to confirm that the  
7 motion is a full and complete statement of the government's  
8 reasons for the motion. That is, beyond what is stated in the  
9 motion, is the government asserting any other reasons for  
10 dismissal.

11 MR. BOVE: We're not asking the court to rely on any.  
12 I do have other concerns, but these are the ones that I think  
13 are dispositive here.

14 THE COURT: I think I heard you say that you're not  
15 asking the court to rely on any reasons other than what is  
16 stated in the motion, is that right?

17 MR. BOVE: Correct.

18 THE COURT: OK. And I just want to confirm my  
19 understanding that the motion contains no statement about the  
20 government's views regarding the strength of the case in terms  
21 of the facts or the legal theory?

22 MR. BOVE: That's correct.

23 THE COURT: OK. Could you please, Mr. Bove, just give  
24 me a very high-level overview of the bases for the motion?

25 MR. BOVE: Yes, your Honor. There are two. They are

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1 laid out and they are articulated at paragraphs five and six of  
2 the motion that's on the screen right now.

3 The first is just a straightforward exercise of  
4 prosecutorial discretion guided by President Trump's Executive  
5 Order 14147 relating to weaponization of the criminal justice  
6 process as well as guidance issued by the Attorney General on  
7 the day she was sworn in, February 5, 2025.

8 And basically what is set forth here is my conclusion  
9 that this case, as a matter of prosecutorial discretion, should  
10 not proceed because it reflects, at minimum, appearances of  
11 impropriety that give cause for concern about abuse of the  
12 criminal justice process. And I believe it actually goes  
13 further than that and it is an abuse of the criminal justice  
14 process.

15 That matter, which, again, in an exercise of  
16 prosecutorial discretion, is, I think, as your Honor alluded to  
17 earlier, virtually unreviewable in this courtroom, especially  
18 where guided by an Executive Order and direct guidance from the  
19 Attorney General.

20 Paragraph six sets forth a separate basis, which I  
21 believe invokes concerns about executive power that go right  
22 to the core of Article II of the Constitution, as does  
23 paragraph five, in such serious ways that they are also  
24 virtually unreviewable in this courtroom.

25 Specifically, paragraph six sets forth my concerns

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1 that the continuation of this prosecution is interfering with  
2 both national security and immigration enforcement initiatives  
3 being run and conducted by the Executive Branch. Again,  
4 pursuant to just vital core Article II powers of President  
5 Trump.

6 THE COURT: OK. Thank you.

7 So, just so I understand, I just want to confirm my  
8 understanding. Broadly speaking, there are two bases for the  
9 motion, and that's the appearances of impropriety as set forth  
10 in paragraph five and the interference with the mayor's ability  
11 to govern in New York City, as set forth in paragraph six.

12 MR. BOVE: Five and six set forth my conclusions, and  
13 I was mindful while preparing the motion of the need to give  
14 the court more than just conclusory assertions. There is also  
15 each paragraph includes a partial factual basis that led to my  
16 conclusions. I emphasize partial.

17 THE COURT: OK. With respect to paragraph -- the  
18 conclusion in paragraph five, which maybe for short I'll refer  
19 to as appearances of impropriety, I just have a few questions  
20 about the contours of what is here. And, again, I just want to  
21 be clear. I'm not taking issue with it.

22 What I'm wanting to do is make sure that I understand  
23 the metes and bounds of what the government's position is here.  
24 And I guess the first question is whether what's asserted in  
25 paragraph five refers to the actual purpose of the prosecution,



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1 the appearances around it, or both?

2 I guess what I mean is, is paragraph five saying that  
3 the prosecution was actually motivated by improper reasons, has  
4 the appearance of being motivated by improper reasons, or both?

5 MR. BOVE: I use the word "appearances" in paragraph  
6 five because I believe that's sufficient to merit the motion  
7 that I filed.

8 THE COURT: OK. But just in terms of what you're  
9 asking the court to rely on, you're not asking the court to  
10 rely on any representation about the actual purpose of the  
11 prosecution, but merely -- and when I say "merely," I don't  
12 mean to downplay it, I mean to distinguish it -- the  
13 appearances of impropriety?

14 Do I have that right?

15 MR. BOVE: Well, I would -- I would say that the  
16 actual purpose in the prosecution is the subject of a couple  
17 ongoing investigations at the Department. What I've relied on  
18 in paragraph five is the appearances.

19 I respectfully submit that this paragraph is  
20 independently sufficient for the court to grant the motion.  
21 Obviously, I'm here personally to answer your Honor's questions  
22 to give you the assurance you need to sign this.

23 I want to be clear, I think the only question is  
24 whether there is any basis to believe that I made these  
25 representations to the court in bad faith, and the answer to

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1 that question is absolutely not.

2 THE COURT: OK. Well, Mr. Bove, I'm certainly not  
3 taking any issue with that right now. What I'm just trying to  
4 make sure that I understand what the representation is. And  
5 what I hear you saying is the appearances of impropriety.

6 Now, so let me just stop there. That's right,  
7 appearances?

8 MR. BOVE: That's what it says, yes.

9 THE COURT: OK. There is also a reference, I think,  
10 in the paragraph to interference with the 2025 mayoral  
11 election. I have a similar question here, and it's whether or  
12 not that's a representation about the purpose or the effect of  
13 the prosecution or both?

14 MR. BOVE: I mean, frankly, I think the fact that  
15 Mayor Adams is sitting to my left right now is part of the  
16 problem. He's not able to be out running the City and  
17 campaigning. I think that is actual interference with the  
18 election.

19 THE COURT: It's having that effect.

20 MR. BOVE: Correct. I think the pendency of this  
21 motion right now has that effect.

22 THE COURT: OK.

23 Can I ask about paragraph six. I think this is the  
24 ability to govern rationale.

25 MR. BOVE: I'm sorry to interrupt.

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1 THE COURT: I think this is where you talk about the  
2 second rationale that you outlined at the top, the ability to  
3 govern. And the last sentence here refers to denial of access  
4 to sensitive information.

5 And is that a reference to Mayor Adams not having a  
6 security clearance?

7 MR. BOVE: Yes.

8 THE COURT: And let me make sure I have it right.

9 Is it that Mayor Adams had a security clearance before  
10 and then lost it as a result of this case?

11 MR. BOVE: I think defense counsel is probably in a  
12 better position to speak to that. My understanding is that he  
13 currently does not have one as a result, I think, it's my  
14 conclusion that he cannot communicate with the appropriate  
15 authorities in a full, candid, complete way that is necessary  
16 for Mayor Adams to protect the public.

17 I think, perhaps, more importantly for purposes of my  
18 motion, the concern is that Mayor Adams' inability to  
19 participate in that process impacts the national security and  
20 immigration objectives that are referenced in the first  
21 sentence, which, again, are core Article II powers of President  
22 Trump.

23 THE COURT: Mr. Spiro, perhaps I can --

24 Mr. Bove suggested I ask you. Is it that Mayor Adams  
25 had security clearance before the indictment was brought and

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1 has lost it as a result?

2 MR. SPIRO: Yes, that's right. And he was also part  
3 of the Joint Task Force at certain levels that he can't be part  
4 of. And he also can't, as I have answered before, deal with  
5 and interact with the very federal government that brought a  
6 case.

7 I think the court knows well what I think of this  
8 case. But he can't interact with them in a normal fashion, in  
9 normal functioning, when they are the ones that brought this  
10 kind of a case against him.

11 THE COURT: Just focusing on the issue of the security  
12 clearance for now, I'm not sure who the question is best posed  
13 to.

14 Is the fact of an indictment the basis for losing a  
15 security clearance, or is it something more specific than that  
16 about the nature of the indictment?

17 MR. BOVE: I can't speak to the internal processes  
18 that led to that decision. My core concern here, whether it's  
19 the security clearance or more generally, is the mayor's  
20 inability to communicate directly in a fulsome way. I'm not  
21 saying there have been no communications, but I think there  
22 would be, my understanding, more and more complete  
23 communications were he not subject to an indictment.

24 That is the motivating factor here. Again, based on  
25 the national security and immigration concerns that are flagged

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1 in the first sentence.

2 THE COURT: OK.

3 MR. SPIRO: Your Honor, I also should just add that  
4 there is other sensitive information that I don't know if it is  
5 directly tied to security clearances that he is not getting  
6 access to regarding terroristic threats and other things like  
7 that from the federal government because of the pendency of  
8 this case.

9 THE COURT: OK. Is Mayor Adams currently in the  
10 process of reobtaining his security clearance, or does that  
11 hinge upon resolution of this motion?

12 MR. SPIRO: It hinges upon resolution of this motion.

13 THE COURT: Is there any sense for how quickly  
14 security clearance can be restored?

15 MR. BOVE: Just a correction. I don't concede that it  
16 hinges, his security clearance resolution, hinges on the  
17 resolution of this motion, because the security clearance issue  
18 is another executive power issue that may or may not be  
19 addressed depending on what the court does here.

20 I think they are separate questions, and it's not my  
21 representation that that one is predicated on the other.

22 THE COURT: Are they, in fact, separate, Mr. Bove,  
23 just so I understand?

24 MR. BOVE: I think the President in the Executive  
25 Branch does have separate authority to grant a security

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1 clearance. And right now, this Executive Branch could revisit  
2 that, but I think Mr. Spiro's point is the controlling one,  
3 which is that separate from whether or not there is a formal  
4 federal government security clearance for Mayor Adams, the  
5 continuation of these proceedings impedes his ability to  
6 communicate with federal authorities in a clear and complete  
7 way.

8 THE COURT: OK. But just so I understand the  
9 situation with the security clearance, it's possible that a  
10 security clearance could be restored independently of how this  
11 motion is resolved?

12 MR. BOVE: I believe so. That's just a matter of the  
13 discretion of the Executive Branch would have to go through the  
14 people who control those clearances. I don't have the  
15 particulars in front of me.

16 The sentence we're talking about is not limited to the  
17 security clearance issue, it refers to sensitive information,  
18 which is why I'm making the point that there is the security  
19 clearance issue that I think, if it wasn't caused by this case,  
20 it has happened concurrent to this case. And there is the  
21 related concern that, just more generally, a charged defendant  
22 represented by counsel cannot communicate with some of the  
23 federal authorities who are responsible for immigration  
24 initiatives in the City. For example, the U.S. Attorney's  
25 office for the Southern District of New York.

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1 THE COURT: And just closing out on the security  
2 clearance issue, is there any sense of how long it might take,  
3 if the Executive decided to restore Mayor Adams' security  
4 clearance, how long that process takes?

5 MR. BOVE: No, because what I'm speaking about is the  
6 President's ability, as the one elected official responsible  
7 for the national security, to drive that process through his  
8 discretion. There is a lot of bureaucratic parts to these and  
9 processes that will have to take place to get it restored.

10 THE COURT: Do you have any sense as to how long those  
11 bureaucratic processes could take?

12 MR. BOVE: No.

13 THE COURT: OK. Mr. Bove, could I ask, are there  
14 other examples you could point me to where this rationale has  
15 been invoked in a decision to dismiss an indictment or to cease  
16 a prosecution in some way where the defendant is a public  
17 official with important responsibilities with respect to public  
18 safety, immigration, or national security, or the like?

19 MR. BOVE: I'm not aware of a case where it's a public  
20 official at issue.

21 But there are cases where the U.S. Attorney's office  
22 in this district has invoked "significant foreign policy  
23 interests" as a basis to seek relief in a case. One is the  
24 *Victor Bout* case, which is docketed at 08 CR 365, in this  
25 district. I quote "significant foreign policy interests." I'm

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1 quoting from docket entry 130.

2 The second case that uses a very similar quote,  
3 "significant foreign policy interests," is *U.S. v. -- I'm going*  
4 *to struggle with the pronunciation here -- Goudarzi,*  
5 *G-o-u-d-a-r-z-i*, which is docketed in this district at  
6 12 CR 830, at docket entry 8. That's the government's  
7 submission there.

8 And, you know, more broadly, the government, the  
9 prosecutors, federal prosecutors, make decisions all the time  
10 about how prosecutorial discretion is to be exercised and  
11 whether it merits continuing with a case or not. This motion  
12 reflects a decision made at the Department of Justice about  
13 this particular case.

14 Other than the fact that, you know, I think there is a  
15 lot of people in the courtroom today, I don't think there is  
16 anything particularly exotic about it. This is a standard  
17 exercise of prosecutorial discretion pursuant to guidelines  
18 that the President and the Attorney General have put in place.

19 THE COURT: If I may ask a question just about, again,  
20 kind of the contours of this argument. And, again, I'm not  
21 taking issue with it. I'm just trying to understand it.

22 Would a rationale like this, this ability to govern  
23 rationale, potentially apply to other public officials with  
24 significant public safety national security responsibilities  
25 here in New York, like, the police commissioner, for example?



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1           Could it potentially be applicable in the event that  
2           the police commissioner were subject to some sort of  
3           investigation or prosecution?

4           MR. BOVE: Yes, absolutely. I think that it's an  
5           obligation of federal prosecutors at the outset of a case and  
6           throughout to consider whether their work is impacting the  
7           safety of the community in a public official's ability to  
8           protect the public, especially in such a critical time in this  
9           City with the immigration problems that we face, the violent  
10          crime problems that we face.

11          I say we. I'm not a resident here anymore. I think  
12          it's clear that we do. So it's absolutely an obligation of the  
13          Department to consider those things and totally appropriate  
14          exercise to do so as a matter of the Take Care Clause  
15          obligation under the Constitution.

16          THE COURT: And separate and apart from New York's,  
17          the context of New York City, could it apply to other chief  
18          executive-type public officials, like the mayor, like a  
19          governor of a border state, for example, who also has public  
20          safety immigration-related and national security  
21          responsibilities, if one of them were ever subject to  
22          investigation or prosecution?

23          MR. BOVE: Yes. You know, every case requires a fact-  
24          specific analysis about the federal interests in play, whether  
25          the case is worth bringing, what policy priorities it may or

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1 may not interfere with. Absolutely.

2 If a case, if an ongoing prosecution presents national  
3 security concerns or concerns about the President's ability to  
4 maintain an immigration policy that he was elected to implement  
5 and enforce, then it would absolutely, the Department will  
6 absolutely consider that in connection with current cases,  
7 ongoing cases, cases that are under investigation. It's a  
8 totally appropriate consideration.

9 THE COURT: And just so, again, I'm trying to  
10 understand the rationales.

11 MR. BOVE: Yes.

12 THE COURT: The other one had to do with, in part  
13 anyway, the appearance of impropriety had to do with the  
14 election. So I guess I shouldn't assume. Again, I should ask  
15 you.

16 I'm sorry. Let me back up and ask you about that  
17 rationale.

18 My understanding of that rationale is that it arises  
19 from a defendant's status as a candidate. That it's because,  
20 at least that portion about election interference, I mean, it's  
21 because the defendant in this case is a candidate for office,  
22 not because he's a public official.

23 So, in other words, that rationale could apply to a  
24 candidate who's not a public official?

25 MR. BOVE: Correct.

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1 THE COURT: And it wouldn't apply to a public official  
2 who's not a candidate, so an unelected public official or a  
3 retiring public official or retired public official wouldn't  
4 apply, the election interference component of what you're  
5 applying to?

6 MR. BOVE: It applies to candidates.

7 THE COURT: This rationale, the ability to govern,  
8 that doesn't apply to candidates?

9 I'm sorry that my questions are so elementary.

10 MR. BOVE: No, it's...

11 THE COURT: I'm trying...

12 MR. BOVE: We're talking about two separate  
13 paragraphs.

14 THE COURT: So this one applies to current public  
15 officials, not candidates, the ability to govern rationale.

16 MR. BOVE: Well, if I could, Judge.

17 THE COURT: Yes.

18 MR. BOVE: What I have emphasized here about paragraph  
19 six and the rationale is federal national security concerns and  
20 federal immigration concerns. Again, core constitutional  
21 powers of the Executive Branch.

22 So I don't think, in our exchange, I don't sense that  
23 there is an effort by the court to narrow the rationale, but I  
24 just want to place emphasis on the points that I think are  
25 dispositive, which is that paragraph six reflects an exercise

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1 of prosecutorial discretion based on concerns that this  
2 particular case, under these current circumstances, interferes  
3 with the President's efforts in the national security realm and  
4 to implement his immigration agenda.

5 THE COURT: And I don't think I'm trying to narrow it.  
6 I'm trying to figure out who it potentially applies to. I  
7 think I just have one more question about it.

8 Is this a rationale that applies regardless of the --  
9 is this a rationale that turns in any way on the nature of the  
10 charges?

11 Is it about the characteristics of the defendant, or  
12 is it some balancing between those things and the charges?

13 MR. BOVE: Well, I think in this particular case, one  
14 of the things that makes -- especially the concerns in  
15 paragraph six about interference with the mayor's ability to  
16 govern, arises from the complexity of the charges and the  
17 volume of discovery and the burdens on the mayor and the need  
18 to prepare for a trial. A trial that, I think, is worth noting  
19 is scheduled to begin just about only two months before the  
20 primaries in that election.

21 So part of the analysis here, the concerns that I have  
22 are about this specific case, the huge volume of discovery, and  
23 the need for any defendant to have a fair and reasonable amount  
24 of time to prepare for trial.

25 THE COURT: OK. Thank you, Mr. Bove.

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1 I don't think I have any other questions about the  
2 motion right now. I'll circle back if I do. I don't think I  
3 do.

4 At this point, I really only have questions about some  
5 documents that were recently filed on the docket.

6 So maybe I could turn to you, Mr. Spiro.

7 MR. SPIRO: Yes, your Honor.

8 THE COURT: I'm not planning on getting into the  
9 substance of them, I just want to make sure I understand the  
10 timing and what they are.

11 MR. SPIRO: Your Honor, if I may just --

12 THE COURT: Oh, sure.

13 MR. SPIRO: -- comment on a couple of things the court  
14 asked me during that discussion of Mr. Bove.

15 THE COURT: Questions that I had for Mr. Bove, or  
16 questions that I had for you?

17 MR. SPIRO: Well, I did want to revisit just the  
18 revocation of the security clearance question that came to me  
19 and bounced off.

20 THE COURT: Oh, sure.

21 MR. SPIRO: Because, you know, I was there. It was  
22 revoked after and because of the indictment. I don't think it  
23 was an independent act. It was because of this case.

24 And I don't think that the theoretical ability of an  
25 executive order or some other, you know, third-tier ability for

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1 somebody to get it back is sort of relevant to that analysis.

2 The other thing that I just wanted to say, because you  
3 asked the government about, sort of, these collateral issues  
4 that they talk about in the motion. You know, I will say,  
5 again, it comes up as a criminal defense lawyer constantly. If  
6 a doctor can't prescribe medication, if a company can't make  
7 some device, the government is always and constantly, and we  
8 are constantly as defense lawyers, telling the government that  
9 if a case makes very little sense and is very weak and the  
10 consequences to collateral consequences are very drastic, that  
11 it makes no sense to bring the prosecution or to continue with  
12 the prosecution.

13 It's literally an everyday thing. I just wanted to  
14 comment on those two notions that came up.

15 THE COURT: Thank you, Mr. Spiro.

16 To the point about, you just raised about the security  
17 clearance, I think my question was not geared so much at  
18 whether the loss of the security clearance here was independent  
19 of the indictment, but whether it was the result of the  
20 indictment itself or the specific nature of the charges in  
21 the -- if there was something about the nature of the charges  
22 in the indictment that affected the security clearance.

23 I'm not an expert in this, so I don't know if you have  
24 any indictment for any kind of offense on you, regardless of  
25 the nature of it. You know, it's hard for me to think of a

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1 good example right now. But something that, I don't know, to  
2 an ordinary person's mind might not be obviously connected to  
3 something that might impinge upon security and whether you  
4 would lose your security clearance as a result of that, or if  
5 there was something specific about these charges. That's all.

6 MR. SPIRO: If they are revoking them on an airline  
7 upgrade case, I think they are revoking them on every case.

8 THE COURT: OK. Thank you, Mr. Spiro.

9 So I just want to ask you, I think, about some of the  
10 submissions that you've put in. I want to start with ECF, I  
11 guess it's, 130-1.

12 This was an exhibit that I think, if memory serves,  
13 you attached to in response to a couple of requests to put in  
14 amicus briefs in this case. It's a letter from you to Mr. Bove  
15 dated February 2 -- I'm sorry -- February 3, 2025.

16 MR. SPIRO: Yes, your Honor.

17 THE COURT: OK. I believe in this letter you make  
18 some of the same arguments that are raised by the government in  
19 its motion. You raise concerns about appearances of  
20 impropriety and also the mayor's ability to govern. I'm kind  
21 of talking about it at a very high level. And also about the  
22 strengths, or lack thereof, of the case in your view.

23 Is that basically right?

24 MR. SPIRO: Yes. The same, many of the same arguments  
25 that I've been making since this happened, that the court is

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1 well aware, I think everyone is well aware of. Obviously at  
2 that time, I was pointing to a couple of additional questions  
3 the government had. And so I obviously addressed those as  
4 well.

5 THE COURT: OK. And the amicus brief that you're  
6 responding to, or I should say briefs, there is one at ECF No.  
7 128 that's proposed by some former United States Attorneys and  
8 that's their letter. I want to ask about document 128-2.

9 (Continued on next page)



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1 THE COURT: And, I'm sorry, this actually was not a  
2 question for Mr. Spiro. These questions will be addressed to  
3 Mr. Bove.

4 Mr. Bove, I believe this is a memorandum dated  
5 February 10, 2025, regarding the Justice Department's decision  
6 to dismiss the case, and that is titled "Dismissal Without  
7 Prejudice of Prosecution of Mayor Adams."

8 Is that right?

9 MR. BOVE: Yes, Judge.

10 THE COURT: And you're familiar with this memo?

11 MR. BOVE: Yes.

12 THE COURT: Are you the author of the memo?

13 MR. BOVE: Yeah. Those are my initials.

14 THE COURT: Okay. And this is authentic? It was  
15 submitted in connection with an amicus brief. I want to  
16 confirm that.

17 MR. BOVE: This is the memorandum I sent to  
18 Ms. Sassoon on that date.

19 I do have a procedural objection to the amicus brief  
20 we're talking about, but I want to be responsive first to the  
21 Court's question.

22 THE COURT: Okay. I mean, I haven't made any kind of  
23 ruling on the amicus brief.

24 MR. BOVE: I would like to be heard on that point.

25 THE COURT: I do want to address your views about

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1 whether or not the Court should consider certain things,  
2 including the amicus brief.

3 But this memo, Mr. Bove, did this represent the  
4 official views of the Justice Department as of this date?

5 MR. BOVE: I mean, this is the authentic document that  
6 I sent to Danielle Sassoon.

7 THE COURT: Okay. And when I consider the  
8 government's motion to dismiss, is it appropriate for me to  
9 consider what's in this memo?

10 MR. BOVE: No.

11 THE COURT: Okay. Explain that to me.

12 MR. BOVE: The record here is the motion that I made.  
13 The only question -- basically, if you start with the *Rinaldi*  
14 footnote 15, the Supreme Court case, you look at the more  
15 recent Second Circuit cases, *Blaszczak*, *HSBC*, the only two  
16 questions are is there some concern about harassment. Your  
17 Honor has addressed that conclusively today.

18 And then, second, is there a question about whether  
19 the motion is so clearly contrary to the public interest that  
20 the Court should not grant it.

21 I'm not sure that I've seen a case where that  
22 conclusion has been reached. But I think what the Second  
23 Circuit has said is ultimately that boils down to whether  
24 there's bad faith. The question of bad faith is just me, as an  
25 officer of the Court, who has practiced in this district for

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1 almost 10 years, here as the Deputy Attorney General, telling  
2 you these are the good faith bases for the motion based on  
3 prosecutorial discretion. That's the end of the inquiry. That  
4 is, first of all, I'm telling you as an officer of the court  
5 that that is made in good faith.

6 Second, I'm entitled to a presumption of regularity  
7 around that. That presumption is guided by the case law around  
8 selective and vindictive prosecution in *Armstrong*, the Supreme  
9 Court case. The only way that that presumption is really  
10 rebutted is by clear evidence to the contrary. That's a quote  
11 from *Armstrong*. There's no evidence to the contrary of my  
12 representation of good faith. I think what these amicus briefs  
13 have suggested is they believe -- they speculate about some  
14 kind of *quid pro quo*. Your Honor has conclusively addressed  
15 that on the record today by questions to Mayor Adams under  
16 oath.

17 And, so, I could go on. The fact of seeking dismissal  
18 without prejudice, as I've already said today, is the default  
19 state of matters under Rule 48. If I hadn't said that in the  
20 motion, the Court would presume that that was my intention. I  
21 think it's also, you know, there's no appearances of  
22 impropriety around a federal prosecution seeking dismissal  
23 without prejudice of a criminal case. The President of the  
24 United States is currently subject to a dismissal without  
25 prejudice of a case in the District of Columbia, where the

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1 district court went out of its way to say that when the  
2 President's immunity no longer applies when he leaves office,  
3 in the district court's view, that that case could be resumed.  
4 So, if that was okay, there's no basis to question my  
5 representations to this Court, especially after the record your  
6 Honor created today, in the motion.

7 And so I do think -- you have some discretion here,  
8 and I think you noted at the outset that it was cabined.  
9 Considering documents outside the record I don't think is part  
10 of that discretion. Even if your Honor considers this, it's  
11 entirely consistent with everything that I've said.

12 THE COURT: Okay. Thank you, Mr. Bove.

13 I want to ask Mr. Spiro now about another letter you  
14 filed. I think it's at ECF 130.

15 Ms. Morales, will you please bring that up on the  
16 screen.

17 So, Mr. Spiro, this is a letter from you to the Court  
18 dated February 18, 2025, responding to the proposed amicus  
19 briefs. Actually, I just want to turn to the last sentences in  
20 it. The last two sentences are "what we never said or  
21 suggested to anyone was that Mayor Adams would do X in exchange  
22 for Y, and no one said or suggested to us that they would do Y  
23 in exchange for X. We are prepared to confirm these points  
24 under oath in sworn declarations."

25 I just want to understand what this is a reference to.

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1 This is a response to a letter from the former acting U.S.  
2 Attorney, Ms. Sassoon. Is that right?

3 Or, rather, what the amicus briefs represent as one.

4 MR. SPIRO: Yeah. I don't know what I'm responding to  
5 anymore. But when somebody says something false enough, enough  
6 times, I'm going to say something. And so I think it's  
7 responding to anyone who suggests such a thing, because it  
8 never happened.

9 THE COURT: When you say "we are prepared to confirm  
10 these points under oath," may I ask just who you're referring  
11 to? It wasn't clear to me from reading this.

12 MR. SPIRO: My colleague and I who were at the  
13 meeting. And I don't expect -- in fact, I know no one is going  
14 to come in and say anything otherwise.

15 And I'm happy to raise my right hand right now.

16 THE COURT: Thank you, Mr. Spiro. I just wanted  
17 clarification on what you were referring to in that letter.

18 Thank you for all that. Unrelated question, and it  
19 may be a moot question. The last order that I issued on the  
20 speedy trial clock was I believe on November 1, 2024, which  
21 excluded time until the date of trial, which is set to begin on  
22 April 21st. Now, the basis for that was that the exclusion of  
23 time was necessary to give the parties time to review  
24 discovery, consider motions, including under CIPA, and to  
25 provide effective assistance while preparing for trial.

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1 Now, I have a request before me to dismiss the case  
2 and not have trial. Does that have an effect on the order that  
3 I issued earlier? Or because the trial date has not been taken  
4 off the calendar, the motion has not yet been granted, does the  
5 previous order stay in place?

6 MR. SPIRO: I mean, I think it runs until this case is  
7 dismissed.

8 THE COURT: Mr. Bove?

9 MR. BOVE: I'm not following exactly the sequence  
10 here.

11 THE COURT: Well, I've excluded time through  
12 April 21st. And I'm asking if that order should be vacated  
13 given that it was premised on review of discovery in  
14 preparation for trial.

15 On the other hand, I still haven't granted the motion,  
16 so perhaps it shouldn't be. And, again, all of this might be  
17 moot very soon. There's also the provision under the Speedy  
18 Trial Act that automatically excludes time once a motion has  
19 been filed. I tend to think of that as applying to defense  
20 motions, not to government ones, but I'm just not sure how the  
21 pieces interlock, so I'm asking for your help.

22 MR. BOVE: I think the automatic exclusion does apply  
23 for government motions as well. But I think the effect of, if  
24 the Court were to grant this motion, would be to close the case  
25 and vacate all orders.

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1 THE COURT: Yes. Understood. Okay. Thank you.

2 Mr. Spiro, do you have a different view?

3 MR. SPIRO: I think that if the case is dismissed, it  
4 will vacate the issue.

5 THE COURT: Yes. I just meant sitting here at this  
6 precise moment, what is the effect on the speedy trial clock?

7 MR. SPIRO: I hate to digress, your Honor, but sitting  
8 here, this precise moment, I'm looking and no appellate court  
9 in this country ever, never once, has upheld a district court's  
10 denial of an unopposed Rule 48 motion, ever. And so that's  
11 where my mind very much is.

12 And so the answer to the question, genuinely, is I  
13 haven't given the idea of what would happen if not much thought  
14 in terms of the Speedy Trial Act.

15 THE COURT: Fair enough. I think I got the answer  
16 from Mr. Bove, at least as things currently stand.

17 I appreciate your patience and your time answering  
18 these questions today. This is a very complicated situation,  
19 at least from where I sit.

20 The one other thing that I did reference and that you  
21 eluded to, Mr. Bove, the amicus briefs and whether or not they  
22 should be considered.

23 So I have two pending requests for amicus filings.  
24 Something I've given some thought to, but haven't decided, is  
25 whether it's helpful for me to consider either of those briefs

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1 or the views of an appointed amicus on I know what seemed like  
2 very simple legal issues here, but just on things like the  
3 legal standard. From my limited research, Rule 48 motions are  
4 often unopposed, as this one is, but they are sometimes  
5 opposed, particularly on the issue of whether or not dismissal  
6 should be with or without prejudice.

7 As a general matter, in our system, adversarial  
8 testing of a position is sometimes helpful to clarify a Court's  
9 thinking and assist in the Court's decision making process to  
10 make sure that the right process is engaged and the correct  
11 results are achieved, but that may not be necessary here  
12 either.

13 So I just want to hear your views on those things,  
14 without regard to the specifics of these particular briefs,  
15 just in terms of the Court's decision making process. The  
16 Supreme Courts sometimes, when there's no one to defend the  
17 judgment below and the two sides that are normally adverse  
18 converge on a position, will sometimes hear from someone else  
19 to just kind of sharpen the thinking and make sure that the  
20 Court is considering everything that it ought to. And I just  
21 wonder what your views are as to that here.

22 MR. BOVE: I think that your Honor has created a very  
23 clear record today by putting Mayor Adams under oath and  
24 putting questions to him about -- that go I think directly to  
25 this *quid pro quo* claim that no party has made to your Honor,



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1 but that the amicus, the proposed amicus briefs make. And I  
2 think the mayor's responses are dispositive and controlling on  
3 that issue. And you have a record undisputed that there is no  
4 *quid pro quo*.

5 I don't concede, and I don't think it's correct, that  
6 even if there was a *quid pro quo*, there would be any issue with  
7 this motion. But the Court doesn't even need to reach that  
8 based on the record that your Honor exercised discretion to  
9 create today, and I think in a very helpful way.

10 The government's position is that this motion should  
11 be resolved as soon as possible. And I say that because of the  
12 serious concerns that we have raised, particularly with respect  
13 to the national security issue and the immigration agenda  
14 issue. I do -- I acknowledge that the Court has a lot of  
15 discretion about consideration of amicus arguments, inviting  
16 amicus participation, but I don't think this is a case where  
17 that will meaningfully aid the record that your Honor created  
18 today. Particularly if you accept and consider the common  
19 cause amicus at Dkt. 124, to which the government has no  
20 objection.

21 I think what your Honor -- I have no doubt that you  
22 reviewed it already as a filing before the Court. That's just  
23 a document full of speculation about a *quid pro quo* that  
24 doesn't exist, that's been refuted today. And that gives, I  
25 think, the Court a sense of what smart, professional, educated,

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1 prepared lawyers, when they take the opposite adversarial view  
2 to the parties here are going to come up with. I don't expect  
3 it would get any better.

4 I do object to consideration of the second amicus at  
5 Dkt. 128 purported to be filed on behalf of a series of former  
6 U.S. Attorneys. And, again, acknowledging the Court has broad  
7 discretion about if, how, and when to invite amicus  
8 participation, a brief authored by Carey Dunne and Mark  
9 Pomerantz, who are both central to the investigation at the New  
10 York District Attorney's Office of President Trump, it just  
11 comes from a place of such bias and lack of impartiality, that  
12 that's not a friend of the Court's submission. That's a group  
13 of people claiming that -- I think the words in the brief are  
14 there should be -- I think the word "roving" might have even  
15 been used, a roving factual inquiry into the situation.

16 That's just partisan noise. That's not an amicus  
17 brief actually trying to help your Honor with the issues that  
18 are before you. So I submit that the Court should not accept  
19 the amicus at Dkt. 128.

20 And, ultimately, as I've said, I think the legal  
21 issues, the legal issues that this motion presents, they are  
22 straightforward, Judge. They're controlled by Second Circuit  
23 authority in *Blaszczak* and in *HSBC*. There's only two prongs  
24 for the Court to consider, whether leave of the Court under  
25 Rule 48 is necessary. Neither is -- they're both consented to

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1 here. The only one that I think even warrants a pause is the  
2 question of whether this motion is so clearly contrary to the  
3 public interest that the Court should intervene.

4 Your Honor has created a record here today that I  
5 think establishes that it's not based on Mayor Adams' sworn  
6 responses. Based on my representations as the decision maker,  
7 that's why I'm here today, is to make very clear and so you can  
8 look me in the eye and see how I came to these conclusions and  
9 we can talk about them.

10 There's no basis, legal basis -- I understand there's  
11 some people behind me who doubt me -- but there's no legal  
12 basis to question the things that I've said in that motion that  
13 I signed. And as a result of that, this motion should be  
14 granted promptly so that the mayor can get back to work,  
15 unhindered, unburdened, not having to deal with this case and  
16 he can focus on protecting the city.

17 THE COURT: Thank you, Mr. Bove.

18 Mr. Spiro, would you like to speak about the amicus  
19 briefs?

20 MR. SPIRO: Yes, your Honor.

21 So as the Court has pretty much said, and I'll  
22 paraphrase, this is an extremely simple and very narrow legal  
23 issue. Your Honor came out and correctly articulated the  
24 standard. Any nonparties involved in this at all create major  
25 issues in terms of separation of powers, due process rights.

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1 Any appointment or allowance at all of doing anything beyond  
2 the submission of papers, which is -- it was already done, is  
3 fraught with peril.

4 Any person that comes before the Court could have  
5 political motivations. The Court would then have to assess all  
6 of that. Meanwhile, as this process has played out since the  
7 Department of Justice announced their dismissal, there have  
8 been prejudicial things, lies, misleading statements, leaks.  
9 Right? The Court may remember, I took issue with the  
10 Department of Justice prosecutors leaking all that information  
11 all that time.

12 Now we have letters going back and forth --

13 THE COURT: Mr. Spiro, I found that there wasn't  
14 evidence that any information out there in the media was  
15 attributable to the prosecution team.

16 MR. SPIRO: Well, I don't want to digress. We didn't  
17 have a hearing about it. But the reality is, the letter that  
18 leaked, the letter that I think we can both agree, sir, the  
19 letter that leaked with the back and forth between the  
20 Department of Justice did have prejudicial and false  
21 information about the mayor in it. There was a letter that  
22 leaked, that we can I hope both agree, couldn't have been  
23 leaked, since it was internal to the Department of Justice,  
24 from any third outside party or bogeyman.

25 THE COURT: I'm sorry. You're not referring to stuff

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1 that was the subject of motions practice earlier?

2 MR. SPIRO: No, I'm talking about now.

3 THE COURT: Okay.

4 MR. SPIRO: Yes, your Honor.

5 THE COURT: I got confused. I apologize. Go ahead.

6 MR. SPIRO: Not at all. But I'm just saying, I think  
7 the Court has to think about that. And the Court can keep  
8 thinking about, and the Court can always revisit its beliefs.

9 Earlier in the case when I said things like, doesn't  
10 this seem a little off, and doesn't this seem a little  
11 politically motivated, and doesn't it seem there are a lot of  
12 leaks going on. The Court can look at the cavalier nature with  
13 which the prosecutors put things in those letters that went  
14 back and forth when the Department of Justice was discussing  
15 this matter.

16 Those prejudicial and harmful and untrue statements  
17 then leaked, those implicated 6(e), I don't think anyone can  
18 come to this Court and tell me credibly that that could have  
19 been anybody other than the people within the Department of  
20 Justice. How could that be? Didn't go to a defense lawyer.  
21 Didn't go to a bogeyman.

22 So we are, as we stand here today, being actively  
23 harmed by this ongoing process, which I think is another  
24 argument to curtail this, to keep it simple. And there's no  
25 reason to sort of carry on here.

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1           Every day harms the election and those concerns harms  
2       democracy every minute that it's not entered. And so I think  
3       those arguments are fair to make in this unique circumstance in  
4       the Court evaluating. Again, all of this is a balancing, the  
5       kind of case that is brought versus the other equities and  
6       collateral issues. The amount of help the Court really  
7       needs -- the Court doesn't need legal help on this issue, I'm  
8       quite confident. The Court already stated the standard right.

9           So it's the value of that versus all these harms we're  
10      talking about, harms of delay, harms like the leaks that have  
11      happened because the case wasn't immediately dismissed when it  
12      should have been.

13          So I think all of those counts against expanded amicus  
14      submissions that the Court doesn't need.

15          THE COURT: Just so I understand it, what I heard from  
16      the government, and, Mr. Bove, correct me if I'm wrong, is that  
17      you object to the brief, the second of the two amicus briefs  
18      that was filed, the former U.S. Attorneys one, but not to the  
19      common cause one. Whereas, Mr. Spiro, you object to both?

20          MR. SPIRO: We take no position on whether the pending  
21      letter motion is part of the record. If it ends there.

22          THE COURT: I'm sorry. Do you object to the Court  
23      considering -- granting either of the motions? I shouldn't put  
24      it in terms of the Court.

25          Do you object to either of the motions for amicus

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1 submissions? I just want to make sure my record is clear so I  
2 understand what I'm doing when I'm ruling.

3 MR. SPIRO: I don't take a position on the first  
4 letter motion.

5 THE COURT: Okay. Thank you.

6 MR. SPIRO: I don't take a position on it. Any  
7 further involvement, I rest on the record I just made.

8 THE COURT: The second letter motion you object to?

9 MR. SPIRO: Correct.

10 THE COURT: Okay.

11 MR. SPIRO: And any further involvement.

12 THE COURT: Okay. Thank you, Mr. Spiro.

13 So I think I understand your position on that. I  
14 think I understand your answers to my questions. I'm going to  
15 take everything that you said under careful consideration. I  
16 understand that there is an important interest here in -- I  
17 should say it's not in anyone's interest here for this to drag  
18 on. I understand that. It's not in the government's interest.  
19 It's not in Mayor Adams', as the defendant, and it's not in the  
20 public's interest. But to exercise my discretion properly, I'm  
21 not going to shoot from the hip right here on the bench. I  
22 want to take the time that is necessary to carefully consider  
23 everything that you have put before me and said today, and I am  
24 considering all of that. I want to make sure that I consider  
25 everything appropriate, and that I don't consider anything

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1 inappropriate, and make a reasoned decision that is mindful of  
2 my role, which I understand here is quite narrow.

3 So I really appreciate you coming here on short  
4 notice. I appreciate the submissions. I am grateful for your  
5 patience as I consider these issues carefully.

6 Is there anything further that would you like to  
7 raise?

8 MR. BOVE: No, your Honor. Thank you for the time.

9 THE COURT: Thank you, Mr. Bove.

10 Mr. Spiro?

11 MR. SPIRO: No, your Honor. Thank you.

12 THE COURT: Thank you all very much. We're adjourned  
13 for today.

14 (Adjourned)